REMARKS

1. Summary of Office Action

In the Office action mailed September 14, 2004, the Examiner rejected claims 1-14 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,366,558 (Howes et al.) in view of U.S. Patent No. 6,094,437 (Loehndorf et al.).

2. Amendments and Pending Claims

Applicants have amended claims 1-2, 4-5, and 9-10, and have added new claims 15-20. Presently pending in this application are claims 1-20, of which claims 1, 4, 5, and 9-10 are independent.

3. Response to §103 Rejections

As noted above, the Examiner rejected claims 1-14 as being unpatentable over Howes et al. in view of Loehndorf et al. Applicants respectfully traverse the obviousness rejection of pending claims 1-14 because Howes et al. and Loehndorf et al., whether considered alone or in combination, fail to disclose or suggest the combination of elements recited in any of these claims.

Applicants have amended claims 1 and 4. Applicants submit that Howes et al. and Loendorf et al., whether considered alone or in combination, fail to cite or make obvious comparing an LNS overload parameter to an LNS overload threshold and responsively determining that said primary LNS is overloaded if said LNS overload parameter exceeds said LNS overload threshold, and (i) in response to determining that said primary LNS is overloaded, establishing a second tunnel from said LAC to said peer LNS, as recited in claim 1, or (ii) in response to said determining step, establishing a second tunnel from said CPE to said peer LNS

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using said state information, and performing a switchover of some of said one or more communication sessions to the peer LNS, as recited in claim 4.

Applicants have amended claim 5. Applicants submit that Howes et al. and Loendorf et al., whether considered alone or in combination, fail to cite or make obvious (i) said primary LNS and said LAC that establish one or more communication sessions between said primary LNS and said LAC, (ii) said primary LNS that detects that said primary LSN is overloaded, and responsively sends said LAC a request to switchover to said peer LNS, and (iii) said request that directs said LAC to switch some of said one or more communication sessions between said primary LNS and said LAC to between said peer LNS and said LAC, as recited in claim 5.

Applicants have amended claim 9. Applicants submit that Howes et al. and Loendorf et al., whether considered alone or in combination, fail to cite or make obvious (1) said primary LNS that includes state information, an LNS overload parameter, an LNS overload threshold, and program code for comparing said LNS overload parameter to said LNS overload threshold and for detecting that said primary LNS is overloaded if said LNS overload parameter exceeds said overload threshold, (2) means for requesting a switchover of communication sessions to said peer LNS if said primary LNS is overloaded, wherein said communication sessions are sessions selected from the group consisting of (i) new communication sessions, (ii) existing communication sessions to said primary LNS, and (iii) new communication sessions and existing communication sessions to said primary LNS; and (3) means for switching over said communication sessions, as recited in claim 9.

Applicants have amended claim 10. Applicants submit that Howes et al. and Loendorf et al., whether considered alone or in combination, fail to cite or make obvious (i) said primary network server and said access concentrator that establish a first set of communication sessions

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between said primary network server and said access concentrator, (ii) said primary network server that detects that said primary network server is overloaded and responsively requests said access concentrator to switchover some of the first set of communication sessions to the peer network server, and thereafter said access concentrator responsively switches some of the first set of communication sessions to said peer network server, and (iii) said access concentrator that uses said state information to switch said some of the first set of communication sessions, as recited in claim 10.

Because Howes et al. and Loehndorf et al., whether considered alone or in combination, fail to disclose or suggest the functional combination of elements as recited in claims 1, 4, 5, 9, and 10, Howes et al. and Loehndorf et al. fail to render obvious the invention of claims 1, 4, 5, 9, and 10. Consequently, Applicant submits that claims 1, 4, 5, 9, and 10 are in condition for allowance. Further, claims 2-3, 6-8, and 11-20 depend from either claim 1, 4, 5, 9, or 10 and therefore incorporate all of the elements of either claim 1, 4, 5, 9, or 10, and thus a *prima facie* case of obviousness of claims 2-3, 6-8, and 11-20 does not exist as well.
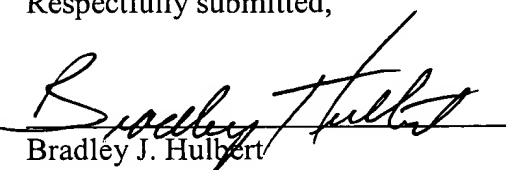
4. Conclusion

In view of the above amendments, remarks and arguments, Applicants respectfully submit that claims 1-20 are now in a condition for allowance, and respectfully request favorable reconsideration and prompt allowance of the claims. If the Examiner would like to discuss this case, the Examiner is welcomed to contact the undersigned at (312) 913-2122.

Respectfully submitted,

Date: November 16, 2004   By: _____
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